REMARKS

The Applicants wish to thank the Examiner for the courtesies extended the Applicants' representatives during the recent telephonic interview held on May 7, 2007. The Applicants discussed the rejections of the claims based upon § 101 and 102(b). The Applicants response, in light of the interview, is provided to the Examiner below.

The Specification is objected to because of a misspelling. Claims 1-22 are currently pending. Claims 3 and 22 are objected to because of typographical errors. Claims 1-10 and 18-21 are rejected under 35 U.S.C. § 112, second paragraph. Claims 1-10 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 1-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by USP 6,157,961 to Kessler *et al.* ("Kessler").

Specification

The Examiner has objected to the Specification because of a typographical error in paragraph [0041]. Paragraph [0041] has been amended without prejudice or disclaimer. No new matter has been added. The Applicants respectfully request that the objection to the Specification be reconsidered and withdrawn.

Claim Objections

Claims 3 and 22 are objected to because of typographical errors. Claims 3 and 22 have been amended without prejudice or disclaimer. No new matter has been added. The Applicants respectfully request that the objection to claims 3 and 22 be reconsidered and withdrawn.

Claim Rejection- 35 U.S.C. § 112

Claims 1-10 and 18-21 are rejected under 35 U.S.C. § 112, first paragraph. The Examiner could not locate the details of the "passing" element of claim 1 and the "identifying" element of claim 18 in the Specification.

Information regarding claims 1 and 18 may be found throughout the Specification, including the Abstract, Summary and Detailed Description of the Specification. More specifically, the elements of claim 1 and 18 may be found in paragraphs [0033] – [0038], as well as other paragraphs of the Specification.

The Applicants respectfully assert that at least the cited portion of the Specification, in addition to the other portions of the Specification not cited, provides sufficient explanation for one of ordinary skill in the art to recognize the steps recited in claims 1 and 18. Therefore, the Applicants respectfully request that the rejections to claims 1 and 18 under 35 U.S.C. § 112, first paragraph be reconsidered and withdrawn.

Claim Rejection- 35 U.S.C. § 101

Claims 1-10 are rejected under 35 U.S.C. § 101 as containing non-statutory subject matter. The claims are directed to a "system", which the Applicants respectfully assert falls clearly within at least one of the four enumerated categories of 35 U.S.C. § 101 statutory subject matter. The Applicants respectfully requests that the Examiner "…state all reasons and bases for rejecting [claims 11-20]…." MPEP 2106(II). The Applicants note that the MPEP states the reasons and bases are to be provided in the first Office action, but, to further prosecution, the Applicants respectfully reassert the same underlying reasons stated above in response to Examiner's rejections of claims 1-10 above would apply to claims 11-20 if the rejections are based upon similar reasoning. Additionally, the Applicants respectfully request the Examiner provide guidance as to how the rejections may be overcome. MPEP 2106(II).

To support the rejection, the Examiner has cited *In re Lintner*, 458 F.2d 1013, 1015 for the proposal that claims which are broad enough to read on statutory subject matter or on non-statutory subject matter are considered non-statutory. The Applicants respectfully assert that the reliance of the Examiner upon *Lintner* is misplaced. Relying upon the Examiner's stated holding of *Lintner*, "[c]laims which are broad enough to read on obvious subject matter are unpatentable even though they also read on nonobvious subject matter", the stated proposition and holding of *Lintner* is inapplicable to the current question of whether or not claim 1 and dependant claims 2-

10 are statutory. According to MPEP 2106 and the Interim Guidelines for Examination, the question of obviousness comes after the question of whether the claims are directed statutory subject matter has been resolved. Thus, the reliance upon *Lintner* is misplaced.

The current law regarding statutory subject matter may be found in MPEP 2106 and in the Interim Guidelines for Examination. According the Guidelines, the Examiner must set forth a *prima facie* case before rejecting a claim under § 101. The Applicants cannot find any further guidance in the Office action setting forth a *prima facie* case outside of the reliance upon *Lintner*. Claim 1 is directed to a "system for executing a function…comprising a function controller, the function controller: allocating space in a second process from a first process…."

Under the guidance provided by the Federal Circuit in *State Street*, the "system" of claim 1 is statutory subject matter because the "system" of claim 1 falls within one of the four enumerated statutory categories of patentable subject matter and also produces a "useful, concrete and tangible result". *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998). Additionally, the existence of a claimed invention being a combination of a machine and one or more steps of the functions performed by the machine does not affect the analysis. *Interim Guidelines citing R.A.C.C. Indus. v. Stun-Tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998).

Accordingly, it is requested that the rejection, under 35 U.S.C. § 101, of claim 1 and dependant claims 2-10 be reconsidered and withdrawn.

Claim Rejection- 35 U.S.C. § 102

Claims 1-22 are rejected under 35 U.S.C. § 102(b). The Applicants respectfully traverse the rejection.

<u>*Claim 11*</u>

Claim 11 recites, in pertinent part, "a method for executing a function within a second process from a first process, the method comprising: allocating space within the second process."

Kessler Fails to Teach Allocation of Space

The first element of claim 11 recites, in pertinent part, *"allocating space."* The allocation of space is instance based, i.e. when a first process is to execute a function within a second process. As best understood, Kessler fails to teach any instance-specific allocation of space. Rather, Kessler teaches the pre-storage of compressed client-side stub execution code without regard to any instance of use. This memory usage is therefore, not instance specific, but rather, a general use of memory for sporadic stub method calls. Therefore, the cited reference fails to anticipate "allocating space".

Space Not Allocated Within A Second Process

The first element of claim 11 recites, in pertinent part, *"allocating space within [a] second process."* As best understood, because Kessler discusses the need to reduce the memory usage caused by disparate stub method calls from client-side applications, the client-side stub execution code, as well as other data, are stored in a *central memory location* to be accessed by various client-side application stub method calls. Kessler, as best understood, teaches the allocation of space outside of a second object, i.e. a memory space common to objects. By distinction, claim 11 claims the allocation of space within a second process. Space available to various applications fails to anticipate space allocated within a second process. A central memory location, whether on the client side or network side, is not anticipatory of an allocation of memory within a second process. Therefore, Kessler fails to anticipate allocation within a second process.

Because Kessler fails to teach allocation of space and the allocation of that space within a second process, as claimed in claim 11, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 11.

Claims 12-17

Claims 12-17 are dependent upon claim 11. Applicants respectfully assert that the rejection to the independent claim has been traversed and respectfully request that the Examiner withdraw the rejections to the dependant claims 12-17.

Claims 1 and 18

The Examiner reincorporated the rejections to claim 11 into the rejections for claims 1 and 18. For the reasons discussed above, the Applicants assert that Kessler fails to anticipate claims 1 and 18. Applicants respectfully request that the Examiner reconsider and withdraw the rejections to claims 1 and 18.

Claims 2-10 and 19-22

Claims 2-10 are dependant upon claim 1 and claims 19-22 are dependant upon claim 18. Applicants respectfully assert that the rejections to claims 1 and 18 have been traversed and respectfully request that the Examiner withdraw the rejections to the dependant claims 2-10 and 19-22.

CONCLUSION

By the remarks provided herein, the Applicant respectfully submits that the Non-Final Office Action mailed March 5, 2007 has been traversed and that the application is in condition for allowance. If the Examiner has any concerns regarding the response provided herein, or wishes to discuss the response further, the Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

Date: June 4, 2007   /Robert A. Madayag III/
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